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No. 173

In the Supreme Court of the United States

OCTOBER TERM, 1954

AMALGAMATED CLOTHING WORKERS OF AMERICA AND CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, PETITIONERS

v.

THE RICHMAN BROTHERS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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The Solicitor General, on behalf of the National Labor Relations Board, as *amicus curiae*, submits this memorandum in support of reversal of the judgment of the Court of Appeals.

We shall not burden the Court by repeating in detail the arguments in petitioners' brief, with which we agree in the main. Moreover, the questions here presented have, to a large extent, already been argued to the Court in *Capital Service, Inc.* v. *National Labor Relations Board*, 347 U. S.

501, decided at the last term. For a fuller exposition of the Government's views on the general problems involved, the Court is respectfully referred to the brief submitted by the Board in that case (No. 328, Oct. Term, 1953). This memorandum is devoted mainly to those aspects of the present case which are of particular importance to the National Labor Relations Board and other regulatory agencies concerned with the enforcement of federally secured rights through exclusively federal procedures.

This case, like *Garner* v. *Teamsters Union*, 346 U. S. 485, presents a situation where the controversy between the parties was "not subject to litigation in the tribunals of the State" (p. 501) because exclusive jurisdiction over the subject matter was vested by Congress, in the Labor Management Relations Act, in the Labor Board and the federal courts. It is undisputed that petitioners' picketing and related conduct, whether lawful or unlawful, had a substantial effect on interstate commerce. Accordingly, the legality of these activities, in their labor relations aspects, was governed solely by federal law; and that issue could be raised only in a proceeding instituted before the Board, and, if raised, would be determined by the Board in accordance with not only the substantive standards but also the procedures and remedies prescribed by Congress.

The provisions of the Taft-Hartley Act dealing with proscribed union activities were carefully

drawn. The subject was controversial, and the Act reflects a legislative purpose to strike a fair balance between the rights of labor, management, and the public. Congress was highly selective in its authorization of remedies to deal with assertedly improper union conduct. In the background was the Norris-LaGuardia Act, with its withdrawal of jurisdiction from the federal courts to grant injunctions in labor disputes. Congress was aware that a labor injunction, even though described as temporary or interlocutory, can end the dispute. Accordingly, it carefully defined, in Section 8 (b), those practices by labor unions and their agents which were to be proscribed; and, in Section 10, it spelled out the procedure to be followed in dealing with charges of union misconduct. (29 U. S. C. 158, 160.)

The Board's jurisdiction over alleged unfair labor practices by a union can be invoked only after a charge is filed with it; it cannot act *sua sponte*. If, after investigation of the charge, the Board's officer or regional attorney finds that there is "reasonable cause" to believe that the charge is true and that a complaint should issue, and that the union's activities fall within the category of those enjoinable under the Act, the Board petitions the appropriate district court for temporary injunctive relief pending the final adjudication of the Board.

Several things are noteworthy about this procedure. First, the Board cannot apply for an

injunction unless and until it has completed an investigation of the charge and has concluded that it is *prima facie* supported by the facts. This is an obvious safeguard against precipitous issuance of injunctions. Secondly, an injunction can be granted by a district court only at the instance of the Board, and not of the employer or other interested party. Thirdly, where the union activities do not come within the class of proscribed unfair labor practices, no injunction can be sought or issued.

This procedure, carefully delineated by Congress, is the exclusive procedure provided by law for dealing with such controversies. Nevertheless, it was not followed in the present case. Instead of having this dispute decided on the basis of federal law by federal tribunals, the matter was taken to a state court which decided it on the basis of state law. At respondent's instance, an Ohio state court, enforcing what it declared to be the law and public policy of the state in the field of labor relations, enjoined petitioners from carrying on picketing and related activities at 69 of respondent's stores, situated not only in Ohio but in 15 other states.[1] There can be no question that the injunction was a patently *ultra vires* assertion of jurisdiction by a state court in an exclusively federal matter. There can likewise

[1] *Richman Brothers Co.* v. *Amalgamated Clothing Workers*, 51 Ohio Opinions 145 (Common Pleas Court, Cuyahoga County), 116 N. E. 2d 60.

be no question that, if it were possible for the injunction to be reviewed directly and immediately by this Court, it would be set aside. *Garner v. Teamsters Union*, 346 U. S. 485. The only question here is whether a federal district court, on application of petitioners, could enjoin respondent from enforcing the state court injunction. As a practical matter, such application to a federal district court was the only remedy available to petitioners. If the decision of the Court of Appeals in this case is correct, it means that there is no adequate procedure available under existing law for a union, where its activities are subject to the exclusive jurisdiction of the National Labor Relations Act, to obtain invalidation of an invalid state court injunction which, though denominated temporary or interlocutory, effectively terminates the dispute.

The injunction in the present case was issued April 14, 1953, and is still outstanding. It could not be appealed either to any other state court or to this Court. *Building Union v. Ledbetter Co.*, 344 U. S. 178. Abstractly speaking, petitioners could conceivably have pursued several courses after the "temporary" state court injunction was issued. First, they might have sought to appeal to a higher state court. Any such appeal would, of course, have been abortive since under state law a temporary order is not appealable. Secondly, they might have proceeded to trial, and if the injunction were eventually made perma-

nent, they could then have appealed to a higher state court and, after exhausting state remedies, sought certiorari here. After some time, perhaps after the controversy had become academic and moot, they might have succeeded in having the injunction vacated. To do so, however, they would have been required to engage in a lengthy and perhaps fruitless litigation in the state courts, trying issues which Congress expressly provided should be tried by a specialized federal administrative tribunal, the National Labor Relations Board, and then reviewed for errors of law by federal appellate courts.

Thirdly, petitioners might have attempted to persuade respondent to file a charge against them with the Labor Board. Such a charge would have been a *sine qua non* to the exercise of Board jurisdiction in the case, and if filed might have resulted in the Board's seeking ancillary injunctive relief, as in the *Capital Service* case. This alternative depended, of course, upon respondent's willingness, after having succeeded in obtaining from a state court the injunctive relief it desired, to submit the matter anew to the Labor Board. Respondent chose, understandably, to rest on the state court injunction. Thus, the only real alternative open to petitioners was to seek relief by independent suit [18] in a federal dis-

[18] Petitioners' earlier attempt to reach the federal district court by removal of the state suit pursuant to 28 U. S. C. 1441 failed, the court holding that a removable cause was not presented. See R. 23, 32 L. R. R. M. 2066. That order was not appealable. 28 U. S. C. 1447 (d).

trict court, on the ground that the rights secured to them by the National Labor Relations Act were effectively being impaired by the outstanding state court injunction.

The court below has held that Section 2283 of the Judicial Code (28 U. S. C.)[2] bars issuance of an injunction, at the suit of a private party, against enforcement of an invalid state court injunction regulating activities as to which exclusive jurisdiction of the subject-matter has been preempted by the National Labor Relations Act. The court below suggested, however, that Section 2283 might not be a bar if the suit in the federal court were brought by the Board rather than a union (R. 34–35). Subsequent to its decision, two other courts, following essentially its reasoning, have drawn the same distinction. *Electrical Workers, C. I. O.* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2, January 6, 1955); *Johnston* v. *Colonial Provision Co.*, 35 L. R. R. M. 2308 (D. Mass., December 28, 1954). As we shall show, *infra*, pp. 13–17, 20–21, the inapplicability of Section 2283 to the present situation is not affected by the circumstance that the injunction is sought by a private party rather than the Board. At this point, however, we emphasize that the conclusion of the court below, which leaves a suit by

[2] This provision reads: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

the Board as the sole possible means of promptly alleviating a state court's impairment of the rights and remedies created by the Act, would, in practice, result in leaving such encroachments largely unchecked.

The Board does not consider that Congress has imposed on it a general obligation to safeguard exclusive federal jurisdiction in the field preempted by the Act, by intervening in state court proceedings involving a question whether the subject-matter of the controversy is such as to preclude state action, or by bringing independent suits in federal courts to restrain such state proceedings. Experience has shown that the number of state court cases presenting a question as to the preemptive effect of the Act is legion;[3] and that the Board learns about only a fraction, and, of these, many are not brought to its attention until after the invalid state injunction has already "decided" the labor dispute. Moreover, the Board's limited budget and personnel would not permit its participation in such cases on any substantial basis. Accordingly, the Board has followed the policy of participating as *amicus curiae* in only those cases presenting a preemption issue which happen to reach this Court. Of necessity it relies on the private parties to protect the Act's exclusive sphere in the day-to-day state court litigation continually threatening it.

[3] A check of the Labor Relations Reporter for the period from January 18, 1954, to September 6, 1954, discloses approximately 35 reported cases of this kind. 33 L. R. R. M. 2324 through 34 L. R. R. M. 2748.

The Board has acted to avert a state encroachment, by means of an independent suit in the federal district court, only in the few situations where the Board's jurisdiction has actually been invoked with respect to the identical labor dispute involved in the state action, so that the continuation of the latter would directly interfere with the Board proceeding.[1] Since Board jurisdiction is dependent upon the filing of a charge or a representation petition with the Board, a party can thus obviate the likelihood of a Board-instituted federal injunctive suit (the only type permitted under the holding of the court below) merely, as in this case, by going to the state court alone and failing to invoke Board processes.

The conclusion of the court below, which would result in this anomaly, rests on the following reasoning: A federal suit by a private party to stay a state court injunction regulating conduct preempted by the Act cannot be regarded as "expressly authorized by Act of Congress," within the first exception specified in Section 2283. For the only provisions of the National Labor Relations Act which could confer power to seek a lifting of the state ban on the union conduct

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[1] *Capital Service, Inc.* v. *National Labor Relations Board*, 347 U. S. 501; *National Labor Relations Board* v. *Industrial Commission of Utah*, 84 F. Supp. 523 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10); *National Labor Relations Board* v. *New York State Labor Relations Board*, 106 F. Supp. 749 (S. D. N. Y.); *National Labor Relations Board* v. *Butte Labor Relations Board*, 33 L. R. R. M. 2841 (D. Mont.).

involved are Sections 10 (j) and (l), authorizing a federal injunction in respect to such conduct, and, by their terms, these provisions grant this authority solely to the Board. (Sections 10 (j) and (l) are set out in petitioner's brief at pp. 47–49.) By the same token, neither can a private suit be subsumed under the second exception to Section 2283, "in aid of [the district court's] jurisdiction"; the only jurisdiction of the district court which its injunction could conceivably aid would be that court's potential power over the same subject under Sections 10 (l) and 10 (j) of the Act, which the Board alone has standing to invoke, and thus to protect. Consequently, if Section 2283 is to be relaxed in the situation here, it can only be where the Board, rather than a private party, brings the suit.

We submit that there are two basic flaws in the foregoing reasoning, which also forms the basis for a similar holding by the Second Circuit in *Electrical Workers, C. I. O.* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (decided January 6, 1955). First, the power of a district court to entertain a suit to restrain an invalid intrusion by a state court upon the field preempted by the Act is not dependent upon Sections 10 (j) and (l) of the Act; it flows from Section 1337 of the Judicial Code (28 U. S. C.)* (which draws no distinction

*This section provides in relevant part that:

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce * * *."

between private parties or the Government), and from the scheme of the Act as a whole (which confers rights on individuals that are entitled to protection without the intercession of the Board). Second, it is unnecessary to fit the instant suit within one of the exceptions specified in Section 2283 since, as this Court has held in numerous cases, the policy and history of that provision show that it is applicable only where the state and federal courts have a concurrent jurisdiction over the subject matter, and not where, as here, Congress has vested exclusive jurisdiction in federal tribunals and the state court is wholly without jurisdiction. In any event, the instant suit may be subsumed under the "expressly authorized" exception to Section 2283.[9] We proceed to develop each of these points.

1. In the *Capital Service* case, 347 U. S. 501, 504, this Court recognized that a suit to enjoin state court action on the ground that it invades the field preempted by the National Labor Relations Act, "is a 'civil action or proceeding' arising under an Act of Congress 'regulating commerce,'" and thus within the district court's jurisdiction under "28 U. S. C. § 1337." Although the suit there was ancillary to a proceeding in the same court under Section 10 (l) of the

[9] Petitioners also present substantial arguments in their brief, at pp. 36-38, that the present case also falls within the second exception to Section 2283, which permits a federal court to enjoin state court proceedings "where necessary in aid of its jurisdiction."

Act, that provision was not held to supply the jurisdictional basis for the suit; the issue there was whether the Act had displaced state control over the labor dispute (a question of construction involving the scope of the Act), whereas the Section 10 (l) proceeding presented the issue whether there was reason to believe that the particular union conduct constituted an unfair labor practice for which interim relief was warranted.

That a district court's jurisdiction to restrain conflicting state judicial proceedings does not rest upon Sections 10 (j) and (l) of the Act is further demonstrated by the instances where the state encroachment consists of an attempt to determine representation questions within the Board's exclusive jurisdiction. In such a situation, the district court has jurisdiction of a suit to enjoin the state action under 28 U. S. C. 1337, even though it is clear that the dispute itself is wholly beyond the court's Section 10 (j) or 10 (l) jurisdiction. *National Labor Relations Board* v. *Industrial Commission of Utah*, 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10); *National Labor Relations Board* v. *Butte Labor Relations Board*, 33 L. R. R. M. 2841 (D. Mont.).

The power of a district court to act under 28 U. S. C. 1337, for the purpose of checking conflicting state action in an exclusively federal field, is not expressly conferred by any provision of the National Labor Relations Act. It is founded on established principles of federal jurisdiction, on

the "all writs" section of the Judicial Code (28 U. S. C. 1651), and on implications drawn from the Act as a whole, which evidences Congress' intention to avoid "diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490.[7] The broad basis for granting injunctive relief in a situation like this, as stated in the *Capital Service* case (347 U. S. at 504), is that "where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right. See *Public Utilities Commission* v. *Gas Co.*, 317 U. S. 456, 468–470; *Bowles* v. *Willingham*, 321 U. S. 503, 510–511. Cf. *American Federation of Labor* v. *Watson* [327 U. S.], at 593–595."

The failure of the court below and the Second Circuit in the *Underwood* case to recognize that a federal court's jurisdiction here is not ancillary to its authority under Sections 10 (j) and (l), but arises independently under 28 U. S. C. 1337, is

[7] This is manifested, e. g., by Section 10 (a) of the Act, which provides that the Board's "power shall not be affected by any other means of adjustment or prevention," and specifies the limited circumstances under which the Board may grant the states authority to regulate in the preempted federal field.

at the root of their erroneous conclusion that only the Board, acting under authority of those Sections, has standing to seek injunctive relief. In short, the established rule that only the Board, and not private parties, may initiate and process unfair labor practice cases (through invocation of Sections 10 (j) and (l) in addition to other provisions in the Act) has no bearing upon the question of whether the Board alone may bring a suit under 28 U. S. C. 1337, or whether it can also be instituted by the private party adversely affected by the illegal state action. The terms of Section 1337, of course, do not restrict the private party; they in effect merely require that the suit present a question as to whether the Act has displaced the state power sought to be exercised, and a suit brought by a private party could raise such question, no less than one brought by the Board.

Moreover, a private party enjoined by a state court from carrying on activities exclusively regulated by the Act would appear to have a legal interest, apart from any possessed by the Board, sufficient to vest it with standing to maintain the federal suit. In addition to frustrating the general policies of the Act, state abridgement of organizational or bargaining rights guaranteed to employees under Section 7 of the Act[*] obviously exerts a direct and substantial impact on

[*] "Section 7 confers [rights] generally on employees and not merely as against the employer." *Hill* v. *Florida*, 325 U. S. 538, 545.

them; similarly, they are directly injured where a state subjects them to a more drastic remedy than the Act provides for such of their conduct as would constitute unfair labor practices thereunder.[9] Furthermore, the fact that employees and their union representative may, without the aid of the Board, properly assert the preemptive effect of the Act as a defense in state proceedings which invade the exclusively federal field (e. g., *Garner* v. *Teamsters Union*, 346 U. S. 485) shows that their separate interest in blocking such state action is legally cognizable.

The validity of the foregoing considerations is not impaired by the holdings that the Act creates only "public" rights which the Board alone can vindicate, and that the procedures which the statute sets up for this purpose cannot be circumvented by direct resort to a district court (cf. R. 34–35).[10] These holdings involve situations where a private party has attempted to interrupt or control the processing of a case through the Act's

[9] Thus viewed, their interest in annulling the state intrusion is much more substantial and personal than a mere desire to act as a "private attorney general" by preserving the Board's right to invoke the potential 10 (j) and 10 (l) jurisdiction of the District Court, the only interest which the Second Circuit in *Underwood* appears to have considered in concluding that a private party lacks standing to maintain a suit like the present one (35 L. R. R. M. at 2341–2342).

[10] *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41.

unfair labor practice or representation machinery. To permit such intrusion would necessarily impair the efficient discharge of the Board's functions, and would negate the specialized and uniform treatment which Congress intended should be given cases before the Board.

In the situation here, on the other hand, permitting the private party to institute suit in the district court has none of these consequences. The suit does not seek a federal court remedy for unfair labor practices or otherwise interfere with the Board's administrative machinery; there is as yet no case before the Board for processing, the sole object of the suit being to eliminate the deterrent to the use of Board processes which the state has interposed by assuming control over the controversy. In these circumstances, there is nothing in the scheme of the Act or the "public" character of the procedures thereunder which would militate against the right of a private party to maintain a suit like the instant one. Cf. Jaffe, *The Public Right Dogma*, 59 Harv. L. Rev. 720; *Garner* case, 346 U. S. at 495–499.[11]

[11] There is no merit to the suggestion in the opinion below (211 F. 2d at 453), based on the Board's decision in *W. T. Carter and Brother*, 90 N. L. R. B. 2020, 2023–2024, that petitioners might have obtained a remedy against the illegal state court injunction here via the Board's unfair labor practice machinery. It is true that, in *Carter*, the Board held that the employer's action in procuring a state court injunction which prohibited the federally protected activities of his em-

Accordingly, when private parties have sought, by independent suit in the federal district court, to enjoin state administrative proceedings, on the ground that such proceedings are barred by the Act, it has consistently been held that they have standing to raise this question and that the court has jurisdiction under 28 U. S. C. 1337.[12] The same conclusion should hold—insofar as concerns standing and jurisdiction—where suit is to restrain *state court* proceedings. For, as this Court recognized in *Smith* v. *Apple*, 264 U. S. 274, 278–280, and more recently in *Capital Service*, 347 U. S. at 504–505, 28 U. S. C. 2283 is merely a limitation on the power of the federal court to grant equitable relief, and not on its jurisdiction

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ployees constituted a violation of Section 8 (a) (1) of the Act, interdicting employer restraint in the exercise of Section 7 rights. However, the Board limited its holding to the particular circumstances of that case, showing, *inter alia*, that the employer's resort to the state court had been part of a bad faith scheme to defeat union organization. Moreover, the *Carter* holding would clearly not be applicable where, as was alleged here, the conduct respecting which the employer secured a state injunction was not protected by Section 7 of the Act, but, like that in *Garner*, was a possible unfair labor practice thereunder.

[12] *A. F. L.* v. *Watson*, 327 U. S. 582; *Food, Tobacco, Agricultural and Allied Workers* v. *Smiley*, 164 F. 2d 922 (C. A. 3); *United Office and Professional Workers* v. *Smiley* 77 F. Supp. 659 (M. D. Pa.); *Linde Air Products Co.* v. *Johnson*, 77 F. Supp. 656 (D. Minn.). See also *Board of Trade* v. *Illinois Commerce Commission* 156 F. 2d 33 (C. A. 7), affirmed *sub nom. Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218.

over the subject matter or on the standing of parties to sue.

2. Thus viewing the ban against enjoining state court proceedings, not as a jurisdictional limitation but as a rule of comity applicable to the granting of injunctive relief, this Court has construed the predecessors to Section 2283 as not barring injunctions in several classes of cases where such relief is "in accord with, and not antagonistic to, our dual system of courts. * * *" *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183. As more fully shown in petitioner's brief (pp. 28–33) and also in the Board's brief in the *Capital Service* case (pp. 46–54), included within such classes of cases is the situation presented here, where the state court is wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress. For where the state court lacks jurisdiction, the interests of comity and orderly judicial administration are not served by having the federal court, which has exclusive jurisdiction, defer to the state court, which has no jurisdiction. Granting of relief by the federal court, rather than resulting in friction and unseemly conflict between state and federal tribunals having concurrent power over a subject (the evil Section 2283 was designed to avoid), is necessary to prevent state intrusion into an area closed to it.

The validity of this reasoning is confirmed by the alternative ground of this Court's decision in

Bowles v. *Willingham*, 321 U. S. 503, 510–511.[13] In that case, a landlord obtained a state court injunction restraining the Price Administrator from issuing certain rent orders under the Emergency Price Control Act, on the theory that the orders and the statutory provisions on which they rested were allegedly unconstitutional. The Price Administrator brought an action in the federal district court to nullify the effectiveness of the state restraint, urging, *inter alia*, that, since Section 204 (d) of the Emergency Price Control Act vested the Emergency Court of Appeals with exclusive jurisdiction to determine the validity of rent orders and regulations, the state court was wholly without power to adjudicate and regulate these matters. This Court held that Section 265 of the Judicial Code—the predecessor of 28 U. S. C. 2283—did not bar issuance of the federal injunction against the state court proceeding, asserting as one ground for its decision that, since "Congress * * * preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts," the "rule expressed in Section 265 which is designed to avoid collisions between state and federal authorities * * * thus does not come into play" (321 U. S. at 511).[14]

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[13] See also, *Western Fruit Growers* v. *United States*, 124 F. 2d 381, 387 (C. A. 9), discussed in the Board's brief in *Capital Service*, pp. 52–53.

[14] The Court further predicated its holding on the fact that, since the action of the state court also constituted a violation of the federal rent regulations and Section 205 (a) of the

Here, as in the *Willingham* case, a federal injunction is sought against a state court proceeding which that court is powerless to conduct and which obstructs and conflicts with the federal administrative and judicial procedures which Congress specified as exclusive. Here, as there, the rationale of the general prohibition against enjoining state court proceedings "thus does not come into play." And see this Court's express reservation of this question in the *Capital Service* opinion (347 U. S. at 505, note 2).[15]

The significance of the *Willingham* decision is not impaired, as the court below (R. 32–35) and the Second Circuit in *Underwood* (35 L. R. R. M. at 2342) suggest, by the circumstance that a private party instituted the instant suit, whereas

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Emergency Price Control Act empowered the Price Administrator to seek injunctive relief against such violations in either federal or state courts, the latter section constituted an implied legislative amendment to Section 265. This ground, however, was alternative to, and independent of, the exclusive jurisdiction ground discussed above. See *Porter* v. *Dicken*, 328 U. S. 252, 255; *Fleming* v. *Rhodes*, 331 U. S. 100, 107–108.

[15] In that case, the Board, rather than a private party, had instituted the suit to nullify the state injunction, and such suit was coupled with a proceeding under Section 10 (l) of the Act for a federal injunction in respect to the same conduct regulated by the state court. In these circumstances, the "preemption" suit could readily be regarded as "necessary in aid of [the district court's Section 10 (l)] jurisdiction," and thus within the second exception to Section 2283. Accordingly, this Court predicated its decision (347 U. S. 501) on this narrow ground and found it unnecessary to consider the other broader grounds (relevant here) advanced by the

the Government brought the suit in *Willingham*. Although this factor might have some relevance insofar as *Willingham* rested on the ground that the federal injunction was in aid of the district court's jurisdiction to restrain violations of the Price Control Act (n. 14, *supra*), it has no relevance whatever to the independent and alternative "exclusive jurisdiction" ground discussed above. For if, as the latter ground assumes, Section 2283 is inapplicable because of the state court's want of jurisdiction over the subject matter, the same deficiency in the state proceeding is present, regardless whether a public agency or a private party seeks the federal injunction.

Nor is the *Willingham* decision rendered inapposite by the fact that Section 265 of the Judicial Code, which was in effect when it was decided, has now been replaced by Section 2283. The changes in language adopted in Section 2283 were intended only to overrule legislatively the decision in *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118, pertaining to a question not material here. The Revisers expressly stated that "the revised section restores the basic law as generally understood and interpreted prior to

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Board for the inapplicability of Section 2283; the opinion specifically notes that (317 U. S. at 505, n. 2):

"In view of our ruling, we find it unnecessary to consider whether, apart from the specific exceptions contained in § 2283, the District Court was justified in enjoining this intrusion on an exclusive federal jurisdiction. Cf. *Bowles* v. *Willingham*, 321 U. S. 503, 510-511."

the Toucy [sic] decision." Reviser's Notes, H. Rept. No. 308, 80th Cong., 1st Sess., A182.[16] See discussion in Board's brief in *Capital Service*, pp. 54–56, and petitioners' brief in this case, pp. 30–36.

3. Although, for the reasons just stated, we think Section 2283, like its predecessor Section 265, has no application in this case, we submit that, were the contrary assumed, the injunction requested by petitioners should nevertheless be regarded as "expressly authorized by Act of Congress," within the contemplation of the first exception specified in Section 2283. As more fully explained in the Board's brief in *Capital Service* (pp. 57–60) and petitioner's brief in this case (pp. 34–36), it is apparent that the term "expressly authorized," as used in Section 2283, was intended to encompass not only legislative authorizations which modify the limitation of Section 2283 in *haec verba*, but also enactments which by necessary implication must carry with them power to enjoin state court proceedings conflicting with a federal jurisdiction expressly made exclusive by Congress. Indeed, most of the federal statutes which were clearly intended to be included within the first exception to Section 2283 lack precise language granting power to stay

[16] Because of the important role played by the Reviser's Notes in the legislative consideration of the Judicial Code of 1948, this Court attaches great weight to the Notes. See, e.g., *Ex Parte Collett*, 337 U. S. 55, 65–71.

state court proceedings; such power can only be found, as here, by necessary implication from the preemptive character of the federal legislation[17]

Contrary to the view of the court below and of the Second Circuit in *Underwood*, Sections 10 (j) and (l) are not the only provisions of the Act from which a power to enjoin state court proceedings invading the preempted federal field may be inferred. As we have shown (pp. 2–4, 12–13, *supra*), the inference that the states are to be excluded from the area preempted by the Act is derived from such general considerations as the scheme of the Act, the comprehensive nature of Congress' undertaking therein, and the evidence in the legislative history of the care and deliberation with which Congress selected the rights and remedies finally enacted into law. See *Automobile Workers* v. *O'Brien*, 339 U. S. 454, 456–459. Since, as we have further shown (pp. 13–17), a private party, no less than the Board, has a legally cognizable stake in protecting the field preempted by Congress against state intrusion, the implied authority to enjoin state court proceedings should exist in a private suit no less than in a suit by the Government.

For the above reasons, therefore, the Board agrees that the injunction issued by the state court in this case deprived petitioners of rights secured to them by the National Labor Relations

[17] It may be noted, moreover, that this construction of the term "expressly authorized" in Section 2283 is consistent

Act; that there were no state remedies available and adequate; that petitioners had standing to invoke the jurisdiction of the federal district court; and that the latter was not barred by Section 2283 from granting appropriate injunctive relief. Petitioners' independent legal rights are not dependent for their vindication upon the Board's initiating injunctive proceedings in federal courts. The Board has not been charged by Congress with such a duty, and is not equipped to perform it. Whether it knows of the pendency of particular cases in the lower courts is wholly fortuitous. In any event, it is not a sufficient reason for denying private parties the relief to which they are clearly entitled to suggest that the Board might possibly

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with the interpretation given to similar language in other Congressional enactments. Thus, nearly identical language is found in the general savings clause, which preserves liability incurred under statutes subsequently repealed "unless the repealing act shall * * * expressly provide [to the contrary]." 16 Stat. 431. As this Court concluded in respect thereto, under this language the preservation of liability so provided "must be enforced unless either by express declaration *or necessary implication*, arising from the terms of the [repealing] law, as a whole, it results that the legislative mind will be set at naught by giving effect to the provisions [of the general savings clause]" (emphasis supplied). *Great Northern Ry.* v. *United States*, 208 U. S. 452, 465.

be able to secure such relief for them by bringing its own suit."

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[18] In the *Underwood* case, 35 L. R. R. M. at 2343, the Second Circuit also noted but did not consider the suggestion that "the inroads made on [the Norris-LaGuardia Act] by the Labor-Management Relations Act may not be widened by mere implication to permit a federal court to grant" relief of the kind sought here. The decisions in the cases cited *supra*, p. 17, n. 12, except the last which does not touch upon the labor relations field, implicitly recognize that a federal suit by a private party to enjoin state encroachment upon exclusive federal jurisdiction is not barred by the Norris-LaGuardia Act. The Norris-LaGuardia Act deprives federal courts of jurisdiction to issue injunctions in cases "involving or growing out of a labor dispute," except in conformity with its provisions. 47 Stat. 70, 29 U. S. C. 101. A preemption suit of the kind involved here, however, does not present a "labor dispute" within this statute, for the question on the merits does not entail adjudication of "any controversy concerning terms or conditions of employment," or employee representation (Section 13, 29 U. S. C. 113), but merely a determination as to where authority to decide such controversy shall reside, *i. e.*, in the state or a federal tribunal. Cf. *Railway Employees Co-op Ass'n* v. *Atlantic B & C Ry. Co.*, 22 F. Supp. 510, 513 (D. Ga.).

Moreover, even if it were thought that this is "a case involving or growing out of a labor dispute" within the meaning of Norris-LaGuardia, the injunction requested by petitioners is nonetheless unaffected thereby. Thus, petitioners did not seek to enjoin any of the acts which that statute exempts from the injunctive process (Section 4, 29 U. S. C. 104), and by the pleadings and the proceedings for a preliminary injunction, petitioners substantially satisfied the statutory prerequisites to the issuance of an injunction in a case involving a labor dispute (Sections 7, 8 and 9, 29 U. S. C. 107, 108, 109). See R. 16-21, 27.

Accordingly, it is respectfully submitted that the judgment of the Court of Appeals for the Sixth Circuit is erroneous and should be reversed.

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